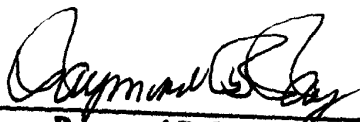


ORDERED in the Southern District of Florida on 01/26/07



  
Raymond B. Ray, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)  
Broward Division

In re: Case No. 05-29974-BKC-RBR  
Dennis S. Farber, Chapter 13  
and  
Stacey M. Farber  
Debtors.

**ORDER DENYING MOTION TO STAY PENDING APPEAL (C.P.104)**

THIS MATTER came for before the Court on January 18, 2007, upon Torrent Acquisition Company LLC (hereafter "Torrent"), *Emergency Motion For Order Enjoining Disbursement of Funds Held By Chapter 13 Trustee Pending Appeal (C.P.104)*. The Court, having reviewed the Motion, heard from Counsel, and being otherwise duly advised in the premises, denies the motion for the reasons that follow.

**Procedural History:**

The Debtors filed this case on October 15, 2005. The case was dismissed on November 11, 2006. Torrent filed its first pleadings in this case on January 5, 2006. See

C.P. 21 and 22. On March 3, 2006, the Court entered its Order Authorizing Chapter 13 Trustee to Disburse Pre-Confirmation Payments to Administrative, Secured, and Priority Creditors (C.P.32)(hereafter the "Vesting Order"). The Vesting Order set out three instructions: (1) all payments made to the Chapter 13 trustee under the filed plan would be "deemed non-refundable to the debtors"; (2) the Trustee was to hold all of the pre-confirmation payments; and (3) if confirmation is denied and the case is dismissed "the Chapter 13 Trustee shall disburse any and all remaining interim payments to the administrative, secured, and priority creditors on a pro-rata basis, less any fees and costs."

On December 14, 2006, Torrent moved (C.P. 91) the Court to vacate the Vesting Order. This Motion was denied (C.P. 95). Torrent then filed a notice of appeal of the denial (C.P.99) which was shortly followed by the current Motion (C.P. 104).

**Legal Analysis:**

*Federal Rule of Bankruptcy Procedure 8005* authorizes a bankruptcy court to grant appropriate relief to protect the rights of parties during the pendency of an appeal. In order for a movant to receive a stay pending appeal, the movant must establish: (a) that the movant is likely to prevail on the merits of its appeal; (b) that the movant will suffer irreparable injury if a stay or other injunctive relief is not granted; (c) that the other parties will suffer no substantial harm if a stay or other injunctive relief is granted; and (d) in circumstances where the public interest is implicated, the issuance of a stay or other injunctive relief will serve the public interest. See *In re: State Street Houses, Inc.*, 2002 WL 3235992 (Bankr. S.D. Fla Dec 23, 2002).

Torrent has failed to meet its burden. The Court does not believe that Torrent is likely to prevail on its appeal. This is because Torrent never appealed the Vesting Order

(C.P.32), even though it was already involved in the case several months before the Vesting Order was entered. In fact it never moved to have the Order re-heard or reconsidered.

Nonetheless, Torrent has also failed to establish the second prong. At present Torrent has succeed in having the Debtors bankruptcy dismissed as a bad faith filing (See C.P. 71). As a result of this dismissal the automatic stay was terminated. See 11 U.S.C. §362(c)(2)(B); see also *In re Hill*, 305 B.R. 100, 104 (Bankr. M.D. Fla. 2003). Therefore, as a judgment creditor Torrent has the ability and right to institute whatever legal collection strategy it wishes. The practice of executing or collecting a debt is a state court matter. The Court lacks jurisdiction to oversee the collection strategy of Torrent with respect to these Debtors. Thus, Torrent suffers no limitation to its collection efforts as a result of the Vesting Order.

As to the third prong, Torrent again fails to meet its burden. The Court incorporates its statement from the December 21, 2006 Order(C.P. 95), “[t]he secured creditors, Debtors Attorney, and Chapter 13 Trustee relied on [the Vesting Order].” See Order Denying Motion To Vacate Order C.P. 95. These parties would be harmed and unduly delayed in receiving payment, if the Court at this late hour, allowed Torrent to hold up the distribution process. These Creditors would have proceeded to protect their interests in a very different fashion had the Vesting Order been challenged in a timely manner. Therefore, Torrent fails under this prong as well.

Finally, the fourth prong also militates against Torrent. The Vesting Order being challenged is one that is used in many Chapter 13 cases. By using the same Vesting Order in almost every case, the Court has ensured that parties know what to expect in a Chapter

13 filing. This has reduced the amount of litigation and motion practice, which has resulted in increased distribution to creditors, an increase in judicial efficiency, a reduction in professional fees, and contributed to the smooth administration of countless Chapter 13 cases. Therefore, in this Court's view the public interest is best served by having the Vesting Order adhered to, unless and until, a court with appellate jurisdiction deems otherwise.

Accordingly, it is

**ORDERED and ADJUDGED:**

that Torrent's *Emergency Motion For Order Enjoining Disbursement of Funds Held By Chapter 13 Trustee Pending Appeal* (C.P.104) is **DENIED**.

The clerk shall furnish copies to:

Michael J. Brooks, Esq  
Dennis Scott Farber  
Stacy Morris Farber  
Robin R. Weiner, Trustee  
Thomas M. Messana, Esq.  
Office of the US Trustee  
David N. Stern, Esq.